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FEDERAL COMMUNICATIONS COMMISSION
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Federal Communications Commission
Office of Secretary

In the Matter of)

Broadcast Localism)

MB Docket No. 04-233

To: Marlene H. Dortch, Secretary
Office of the Secretary

COMMENTS OF EDUCATIONAL MEDIA FOUNDATION

Educational Media Foundation ("EMF"), by its attorneys and pursuant to Sections 1.415 and 1.430 of the Commission's rules, hereby submits its comments in response to the *Notice of Inquiry* in the above captioned proceeding, released July 1, 2004 (the "*NOI*"). EMF is the licensee of hundreds of noncommercial educational radio broadcast and FM translator stations serving communities throughout the country with educational programming, including religious and family-oriented programming and contemporary Christian music, as part of either the K-LOVE Radio Network or the Air-1 Radio Network. In this proceeding, the Commission seeks comment on whether and, if so, what additional policies, practices, or rules are needed to promote a "system of local broadcasting that is responsive to the unique interests and needs of individual communities." *NOI* at ¶ 4. As part of its consideration of this question, the Commission asks whether low-power FM ("LPFM") stations, which may originate local programming, should be given a preference over FM translator stations, which are generally prohibited from originating programming. EMF strongly opposes any such proposal. Noncommercial FM translator stations, such as those operated by EMF, provide an important public benefit by serving rural areas as well as underserved, niche markets that are often overlooked by full power radio stations. While LPFM stations may expand the options available

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to underserved groups, it is not in the public interest to deprive the public of service on which it has come to rely.

DISCUSSION

As numerous comments in this proceeding demonstrate, EMF's programming meets the unique needs and interests of underserved segments of the communities that EMF serves.

Translators form an integral and indispensable role in EMF's provision of service. Over the years, EMF has made a substantial investment in the translator service in an effort to respond to the inadequately addressed need for and interest in its specialized Christian educational programming. The result has been that EMF's programming is now heard on more than 160 FM translators throughout the United States, with some of these stations having been operational since as far back as 1987. Countless comments filed in this proceeding reveal that EMF's translator stations have become an invaluable part of the communities in which they operate on which their listeners have come heavily to rely.

Like EMF, other noncommercial broadcasters with different program formats have employed translators to provide listeners in rural and other areas with unique formats that are often overlooked by full power broadcasters. In communities all over the country, listeners have come to rely on these stations. As the Commission has recognized in the FM and television allotment context, "[t]he public has a legitimate expectation that existing service will continue" *Amendment of the Commission's Rules Regarding Modification of FM and TV*

Authorizations to Specify a New Community of License, 5 FCC Rcd 7094, ¶ 19 (1990). In that same context, the Commission also found that "[r]emoval of service is warranted only if there are sufficient public interest factors to offset the expectation of continued service." *Id.* In this case, the ability of increased numbers of new LPFM stations to initiate service cannot outweigh

the detriment to the public interest that will be caused by the disruption of established listening patterns and the potential deprivation of millions of listeners of programming on which they have come to depend.

This lack of public interest benefit is especially likely since LPFM stations, while permitted to originate local programming, are not required to do so. Thus, it is unclear that the initiation of these new services will significantly enhance localism. More importantly, even if some LPFM stations do originate local programming, it is still not apparent that these stations will enhance localism in any meaningful way. Specifically, the Commission's rules define local origination for LPFM stations as "the production of programming, by the licensee, within ten miles of the coordinates of the proposed transmitting antenna." 47 C.F.R. § 73.872(b)(3). It is not clear, however, how this requirement will promote programming that addresses issues of special concern to the local community or otherwise serves the specific needs and interests of the community. These stations may be nothing more than over-the-air jukeboxes, which would not offer the kinds of informational programming currently provided by the translators operated by EMF and other noncommercial broadcasters. A rule that prefers LPFM stations over FM translators will simply result in the displacement of an established service that serves the specialized needs of niche listeners with an unproven new service. Such an outcome would not serve the public interest.

Moreover, LPFM has the additional disadvantage of potentially causing interference to existing full power FM stations and thereby disrupting service to their listeners. Specifically, FM translators, as a secondary service, are prohibited from causing interference in any areas where a full service FM station has a "regularly used" signal, including locations beyond the full service station's applicable protected contour. 47 C.F.R. § 74.1203(a)(3). By contrast, LPFM

stations are only required to protect subsequently authorized full service FM stations if interference is caused within the full service station's principal community contour or community of license. 47 C.F.R. § 73.809(a). Thus, while the benefits to localism of preferring LPFM stations over FM translators are in doubt, there is no question that such a preference will likely cause increased interference to existing FM stations.

One way in which the Commission could enhance localism without harming the public, however, would be to permit noncommercial FM translators to air public service announcements and other local announcements of particular interest to the communities in which the stations are located. As the Commission notes in the *NOI*, translators currently are forbidden from originating programming except for emergency warnings of imminent danger and limited announcements seeking or acknowledging financial support. 47 C.F.R. §74.1231(g). This rule should be relaxed to permit limited origination by noncommercial FM translators of local public service announcements or local news reports. Such a change would be in keeping with the current rules permitting the insertion by FM translators of emergency warnings and donor announcements while not unduly expanding the existing role of these stations.^{1/}

As the Commission acknowledges in the *NOI*, more than a thousand LPFM applications have been granted under the current rules. *NOI* at ¶ 45. Moreover, there will be increased opportunities for many more such stations should the third-adjacent minimum distance separation requirements applicable to LPFM stations be eliminated as proposed. Accordingly,

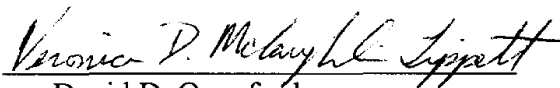
^{1/} As the Commission notes, while FM translators were originally envisioned as a "fill-in" service for full-power FM stations, the Commission currently permits noncommercial FM translators operating in the reserved band to be fed by satellite from a commonly owned primary station. 47 C.F.R. § 74.1231(b). In these circumstances, it would greatly benefit the public and enhance localism for these noncommercial FM translators to be able to deliver local announcements.

there would seem to be no urgent need to potentially displace scores of translators operated by EMF and others that serve millions of loyal listeners with a service in its infancy and without a solid record of public service.

For the foregoing reasons, EMF urges the Commission to reject any proposal to give LPFM stations a preference over FM translator stations and to adopt a rule permitting noncommercial FM translator stations to broadcast local announcements of particular interest to the communities in which the stations are located.

Respectfully submitted,

EDUCATIONAL MEDIA FOUNDATION

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